IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.3580/2006.

Pandurang Dnyanu Chalke & Ors ..Petitioners.

V/s.

State of Maharashtra & Ors ..Respondents.

Mr F.Pooniwala i/b Mr Ivor Peter D'Cruz, Advocate for the Petitioners.

Mr A. H. Palekar, G.P. for Respondent Nos.1 and 6.

Mr Y. S. Jahagirdar, Sr. Advocate with Mr Vaibhav Sughare i/b M/s. Yasmin Bhansali & Co. for the Respondent Nos. 2 to 5.

Mr Abhijeet Wagh i/b M/s. Utangale & Co. for Respondent No. 7.

CORAM: V.C. DAGA,J.

DATED: 23rd March,2007.

P.C.:-

1. Perused petition. Heard learned counsel for the parties. Rule. By consent, rule is made returnable forthwith.

THE FACTS:-
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2. This petition is directed against the order dated 22rd March, 2006 passed by the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Tribunal, Mumbai in Appeal No. 28 of 2005 filed under Section 4 of the

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("the Act" for short).

3. It is not in dispute that in the appeal challenge was to the Notification dated 25.5.2001; whereby the entire area of C.T.S. No. 131 of Mazgaon admeasuring 2499 sq. mtrs. was declared as a slum and the aforesaid Notification was published in the Maharashtra Government Gazette dated 28th June, 2001.

4. It is also not in dispute that the appeal was filed sometime in the year 2005 alongwith application for condonation of delay with an affidavit giving reasons in support thereof.

5. The Tribunal appears to have dealt with the matter on merit and without considering prayer for condonation of delay, and denotified the area admeasuring about 167.57 sq.mtrs. from the aforesaid total area of the plot of land in question by an impugned order dated 22.3.2006. This order is a subject matter of challenge in this petition filed under Section 227 of the Constitution of

India.

CONSIDERATION:-

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6. One of the challenges to the impugned order is that the Tribunal had no jurisdiction to deal with the appeal on merits, without condoning delay in preferring appeal. Both parties were unable to confirm or point out that any order was passed by the Tribunal on the application seeking condonation of delay.

7. Mr Pooniwala learned counsel for the petitioner has emphatically submitted that no order condoning delay in filing appeal was passed on the said application seeking condonation of delay. Mr. Jahagirdar, learned senior Counsel appearing for the contesting respondents, is not in a position to throw any light as to whether application for condonation of delay was considered by the Tribunal and that the appropriate order thereon was passed by the Tribunal.

8. In the above view of the scenario, in absence of any material on record one has to conclude that the Tribunal did not pass any

order on the application seeking condonation of delay. Needless to mention that it was obligatory on the part of the Tribunal to first consider an application seeking condonation of delay in filing appeal as per law laid down by the Apex Court in the case of **Gagandeep Pratishthan Pvt. Ltd. Vs Meehano, 2002 (1) SCC 475.** In the absence of order on application of condonation of delay, it was not open to the Tribunal to deal with the matter on merits because the Tribunal gets jurisdiction to deal with the appeal only upon condonation of delay in the appeal filed beyond the period of limitation as per law laid down by the Division Bench of this Court in the case of **Mathuradas Mohata College of Science Vs. R. T. Borkar, 1997 (2) Mh.LJ 168.**

9. In the above view of the matter, it is not necessary to consider the rival submissions advanced by the learned counsel for the parties on merits of the matter. The impugned order is thus liable to be set aside without examining merits and/or demerits thereof; and the Appeal No.28/2005 is liable to be restored to the file of the Tribunal. The proceedings are thus remitted back to the

Tribunal with direction to hear the parties on application for condonation of delay and decide the same on it's own merit.

10. It would be open for the contesting parties to file their reply in opposition. Needless to mention that the Tribunal will deal with and decide application with reasoned orders following the principles of natural justice. In the event of condonation of delay, it would be open for the Tribunal to decide the appeal on it's own merits.

11. The Tribunal is directed to hear and dispose of the appeal; as expeditiously as possible, at any rate, within a period of three months from the date of receipt of order. All rival contentions are kept open.

12. In the result, petition is allowed on the aforesaid limited ground. Rule is made absolute. No order as to costs.

[V.C.DAGA,J]